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U. S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED] Office: HARTFORD, CONNECTICUT Date: JUL 30 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Preserve Residence for Naturalization Purposes under section 316(b) of the Immigration and Nationality Act, 8 U.S.C. § 1427.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Hartford, Connecticut. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained, and the application is approved.

The applicant is a lawful permanent resident who is employed by the publicly-traded fire safety products company, UTC Fire & Security, Inc. (UTC). The applicant seeks to preserve her residence for naturalization purposes under section 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1427(b), as a lawful permanent resident who is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof.

The field office director determined that the applicant was not eligible for benefits under section 316(b) of the Act primarily because the applicant was employed by UTC before she became a United States lawful permanent resident. The application was denied accordingly. The field office director also denied the application because the applicant failed to submit tax transcripts in response to a request for evidence. 8 C.F.R. § 103.2(b)(13).

On appeal, counsel to the applicant asserts that the bar in section 316(b) of the Act to which the field office director referred applies only to persons who have been employed by a public international organization prior to obtaining lawful permanent resident status. Counsel asserts that the section 316(b) of the Act bar does not apply to persons who were employed by an American firm or corporation prior to obtaining lawful permanent resident status, and thus the applicant is not required to establish that her employment with UTC began after she became a lawful permanent resident.

In order to be naturalized as a United States citizen, the Act requires in part, that a person reside continuously in the United States as a lawful permanent resident for at least five years prior to filing an application for naturalization, and that the person be physically present in the United States for at least one half of the required residency period. *See generally* section 316 of the Act, 8 U.S.C. § 1427.

Section 316(b) of the Act provides, in pertinent part that:

[A]bsence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the application for naturalization) shall break the continuity of such residence except that in the case of a person who has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year and who thereafter, is employed by . . . an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, *or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent*

*residence*, no period of absence from the United States shall break the continuity of residence if-

(1) Prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the [Secretary of Homeland Security] that his absence from the United States for such period is to be . . . engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the [Secretary] that his absence from the United States for such period has been for such purpose.

(Emphasis added).

The first issue in the present matter concerns whether the applicant is eligible for the benefit sought under section 316(b) of the Act even though she was employed by UTC before being admitted to the United States as a lawful permanent resident.

The AAO notes that the statutory language contained in section 316(b) of the Act does not require a person to establish that he or she became a United States lawful permanent resident subsequent to the commencement of employment with an American firm or corporation. Rather, the statutory language specifying that an alien may not be employed by an organization prior to lawful admission for permanent residence refers only to section 316(b) provisions pertaining to employment by public international organizations.

Furthermore, the Immigration and Naturalization Service (INS), now U.S. Citizenship and Immigration Services (USCIS), interpreted § 316(b) of the Act to require that an alien who began employment with a United States company prior to becoming a lawful permanent resident need only establish that he or she was physically present and residing in the United States after being lawfully admitted for permanent residence for at least one year prior to his employment abroad. *Matter of Warrach*, 17 I&N Dec. 285, 286 (Reg. Comm. 1979).

Accordingly, the AAO agrees with counsel that the applicant was not required to establish that her employment by UTC commenced after her admission as a lawful permanent resident, and the field office director's decision shall be withdrawn.

The second issue concerns the applicant's failure to fully respond to the field office director's request for evidence. On May 24, 2007, the field office director requested that the applicant submit copies of her federal

and state tax returns for 2004, 2005, and 2006 as well as federal and state transcripts. The field office director gave the applicant 30 days to reply. In response, counsel submitted on June 22, 2007 copies of the applicant's 2004 and 2005 tax returns as well as evidence that the applicant requested an extension to file her 2006 return. Counsel did not submit tax transcripts noting in his June 21, 2007 letter that it could take "several weeks to obtain such transcripts."

On September 18, 2007, the field office director denied the application noting that the applicant did not respond fully to the request for evidence "within a reasonable period of time." 8 C.F.R. § 103.2(b)(13).

On appeal, counsel submitted copies of the applicant's 2004, 2005, and 2006 tax returns.

Upon review, the AAO concludes that the evidence in the record establishes that it is more likely than not that the applicant is eligible for the benefit sought. Although the applicant did not submit transcripts in response to the request for evidence, or even on appeal, it is noted that the evidence in the record, e.g., passport copy, tax returns, employer letters, and list of absences from the United States, satisfactorily establishes that the applicant more likely than not has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year. The evidence also sufficiently establishes that the applicant has not relinquished a claim of having retained lawful permanent resident status while abroad. 8 C.F.R. § 316.5(d).

Accordingly, the field office director's shall be withdrawn, and the application shall be approved.

**ORDER:** The appeal is sustained. The application is approved.